

1 The Honorable Fred Van Sickle
2
3 STEVE W. BERMAN, WSBA No. 12536
4 ERIN K. FLORY, WSBA No. 16631
5 HAGENS BERMAN SOBOL SHAPIRO LLP
6 1918 8th Avenue, Suite 3300
7 Seattle, WA 98101-2609
8 (206) 623-7292
9
10 BRADLEY B. JONES, WSBA No. 17197
11 KENNETH G. KIEFFER, WSBA No. 10850
12 F. MIKE SHAFFER, WSBA No. 18669
13 GORDON THOMAS HONEYWELL
14 MALANCA PETERSON & DAHEIM LLP
15 1201 Pacific Avenue, Suite 2100
16 Tacoma, WA 98402
17 (253) 620-6500
18
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22

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON
13 AT SPOKANE

14 In re METROPOLITAN SECURITIES
15 LITIGATION

16 No. CV-04-0025-FVS

17 THIS DOCUMENT RELATES TO:
18 ALL ACTIONS

19 PLAINTIFFS' MEMORANDUM
20 IN SUPPORT OF MOTION *IN*
21 *LIMINE* TO PRECLUDE PWC
22 ARGUMENTS THAT ROTH
23 CAPITAL IS LIABLE FOR ITEMS
24 THE COURT HAS ALREADY
25 RULED ROTH IS NOT LIABLE
26 FOR

27 Hearing Date: March 3, 2010
28 Time: 9:00 a.m.

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1 Plaintiffs hereby move the Court *in limine* for an order precluding PwC from
 2 contending at trial that settled Defendant Roth Capital Partners, LLC (“Roth”)
 3 should be considered at least partly liable for the financial portions of the
 4 registration statement, as well as for written portions of the registration statements
 5 which the Court has already ruled on. Plaintiffs have reason to believe PwC will
 6 do everything it can to make it appear that the settled defendants Roth and Ernst &
 7 Young are liable for all or most of any damages suffered by the Class. However,
 8 they should be barred from doing so with regard to Roth on issues that the Court
 9 has ruled upon.

10 As the Court will recall, Roth moved for summary judgment on several
 11 issues, including that (1) five specific items that Plaintiffs alleged were false or
 12 misleading risk statements in various registration statements and financials, and (2)
 13 there was no genuine issue of material fact as to whether it could be held liable for
 14 the “expertised” portions of the registration statements, namely the financial
 15 statements. Following briefing and oral argument, the Court ruled, on January 28,
 16 2010, that Roth was not liable for any of the five risk statements. Ct. Rec. 941, pp.
 17 2-7. The Court also ruled that Roth was not liable for the financial statements:
 18

19 Roth was not required to perform complex financial
 20 analysis, nor was it required to challenge PwC’s and
 21 E&Y’s accounting determinations. Instead, Roth was
 22 obligated to look for red flags. The plaintiffs have failed
 23 to identify any circumstance that should have put a
 24 layman on notice that PwC’s and E&Y’s accounting
 25 determinations were untrue or misleading. As a result,
 26 Roth was entitled to rely upon the accounting
 determinations that are contained in the relevant
 registration[] statements.

MEM. RE: MOTION *IN LIMINE* TO
 PRECLUDE PWC ARGUMENTS
 THAT ROTH CAPITAL IS LIABLE - 2



1918 EIGHTH AVENUE, SUITE 3300 • SEATTLE, WA 98101
 (206) 623-7292 • FAX (206) 623-0594

1 *Id.* at 9-10. PwC should not be allowed to contradict the Court's ruling and reopen
 2 these issues at trial. The Court has already ruled on these rulings on the statements
 3 and the financials as a matter of law. In particular, as to the financials, unless PwC
 4 wants to and can identify a "circumstance that should have put a layman on notice
 5 that PwC's and E&Y's accounting determinations were untrue or misleading,"
 6 there is no basis for them to argue for such liability at trial. Plaintiffs strongly
 7 suspect that PwC will not attempt to make any such argument, and unless PwC
 8 does and can show a factual basis for the argument, the issue should be closed to
 9 them at trial.

11 Dated this 16th day of February, 2010.
 12

13 HAGENS BERMAN SOBOL SHAPIRO LLP
 14

15 By /s/ Tyler S. Weaver

16 Steve W. Berman, WSBA No. 12536
 17 Erin K. Flory, WSBA No. 16631
 18 Tyler S. Weaver, WSBA No. 29413
 19 Jeniphr Breckenridge, WSBA No. 21410
 20 1918 8th Avenue, Suite 3300
 21 Seattle, WA 98101
 22 Telephone: (206) 623-7292
 23 Facsimile: (206) 623-0594

24
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 26
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1 F. Mike Shaffer, WSBA No. 18669
2 Bradley B. Jones, WSBA No. 17197
3 Kenneth G. Kieffer, WSBA No. 10850
4 GORDON, THOMAS HONEYWELL,
5 MALANCA, PETERSON & DAHEIM LLP
6 1201 Pacific Avenue, Suite 2100
7 Tacoma, WA 98402
8 Telephone: (253) 620-6500
9 Facsimile: (253) 620-6565

10
11 *Co-Lead Counsel for Plaintiffs*
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MEM. RE: MOTION IN LIMINE TO
PRECLUDE PWC ARGUMENTS
THAT ROTH CAPITAL IS LIABLE - 4



1918 EIGHTH AVENUE, SUITE 3300 • SEATTLE, WA 98101
(206) 623-7292 • FAX (206) 623-0594

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party via email on February 16, 2010 to the following:

George S. Azadian Azadian@strook.com

James K Barbee at jim@golbeckroth.com

Philip S Beck at anne.doyle@bartlit-beck.com; susan.dandrea@bartlit-beck.com

Ronald L Berenstain at rberenstain@perkinscoie.com; jstarr@perkinscoie.com

Steve W Berman at steve@hbsslaw.com; heatherw@hbsslaw.com

Brian D Buckley at bbuckley@fenwick.com

Elizabeth J Cabraser at ecabraser@lchh.com; ewalser@lchh.com

Kelly P Corr at kcorr@correronin.com; dpatterson@correronin.com;
reception@correronin.com

Pearl Del Rosario at pdelrosario@orrick.com; valdeman@orrick.com

Christopher G Emch at emchc@foster.com; pateb@foster.com

Timothy L Filer at filet@foster.com; howej@foster.com

Steven Fogg at sfogg@correronin.com; jvandiver@correronin.com

E Joseph Giometti at jgiometti@orrick.com; gjohnson@orrick.com

Peter Jennings Grabicki at pjg@randanco.com; scc@randanco.com
nlg@randanco.com

Gary I Grenley at ggrenley@grebb.com

Richard M Heimann at rheimann@lchb.com; lsimms@lchb.com

Kenneth P Herzinger at kherzinger@orrick.com

MEM. RE: MOTION *IN LIMINE* TO
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1 David D Hoff at dhoff@tousley.com; btaylor@tousley.com

2 Tarek Ismail at tarek.ismail@bartlit-beck.com; anne.doyle@bartlit-beck.com

3 Stephen M Knaster at sknaster@orrick.com; vadelman@orrick.com

4 James B. King at jking@ecl-law.com

5 Christopher D Landgraff at chris.landgraff@barlit-beck.com

6 Mary D Manesis at mmanesis@stroock.com; cdusi@stroock.com

7 J Scott McBride at scott.mcbride@barlit-beck.com

8 James P McNeill, III at mcnej@foster.com

9 Michael L Merriman at michael.merriman@barlit-beck.com

10 Jeffrey S Miller at milje@foster.com; kellie@foster.com; snydd@foster.com; hickc@foster.com

11 John Degnan Munding at munding@crumb-munding.com; brittany@crumb-munding.com

12 Robert J Nelson at rnelson@lchb.com

13 Kevin Daniel O'Rourke at korourke@southwellorourke.com

14 Carl J Oreskovich at carl@ettermcmahon.com; roni@ettermcmahon.com

15 Erin K. Flory at erin@hbsslaw.com; carrie@hbsslaw.com

16 Andrew K Polovin at andrew.polovin@bartlit-beck.com; anne.doyle@bartlit-beck.com

17 Terry J Price at tprice@rmalw.com

18 Mark Roth at mark@golbeckroth.com

19 Stephen M Rummage at steverummage@dwt.com; jeannecadley@dwt.com

20 Darrell W Scott at scottgroup@mac.com; ssimatos@mac.com

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1918 EIGHTH AVENUE, SUITE 3300 • SEATTLE, WA 98101
(206) 623-7292 • FAX (206) 623-0594

1 M Todd Scott at tscott@orrick.com; jwatts@orrick.com; tmanolova@orrick.com

2 James M Shaker at shaker@ryanlaw.com; callahan@ryanlaw.com

3 Daniel F Shea at dfshea@hhlaw.com;

4 Kim D Stephens at kstephens@tousley.com; efile@tousley.com;
5 jalbertson@tousley.com

6 Julia B Strickland at jstrickland@stroock.com; tmitchell@stroock.com;
7 lacalendar@stroock.com

8 Earl M Sutherland at esutherland@rmlaw.com; lfisher@rmlaw.com

9 Beth E Terrell at bterrell@tousley.com; bkinsey@tousley.com; efile@tousley.com

10 Paul H Trinchero at ptrinchero@grebb.com

11 Michael C Tu at mtu@orrick.com; sspencer@orrick.com

12 Robert P Varian at rvarian@orrick.com

13 Fabrice Vincent at fvincent@lchb.com; dclevenger@lchb.com

14 Joshua Watts at jwatts@orrick.com; gjohnson@orrick.com

15 Christine Marie Weaver at cw@cweaverlaw.com

16 Leslie Richard Weatherhead at lwlbertas@aol.com

17 Charles S Wright at charleswright@dwt.com; terriray@dwt.com

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22

23

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1 HAGENS BERMAN SOBOL SHAPIRO LLP
2

3 By s/ Tyler S. Weaver
4

5 Tyler S. Weaver, WSBA No. 29413
6 1918 8th Avenue, Suite 3300
7 Seattle WA 98101
8 Telephone: (206) 623-7292
9 Facsimile: (206) 623-0594

10
11 *Co-Lead Counsel for Plaintiffs*
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14
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